IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13926 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

VAGHJI BHAVANJI SOLANKI - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/08/2005

ORAL JUDGMENT

Though served, nobody appears on behalf of the respondent. Under the circumstances, this Court has no other alternative but to decide and dispose of the Special Civil Application on merits ex-parte.

2. Rule. In this petition under Article 226/227

of the Constitution of India, the petitioner, Gujarat State Road Transport Corporation, has challenged the legality and validity of the judgment and order passed by the Labour Court, Himmatnagar dated 24.2.2005 in Recovery Application No. 80 of 2000 by which the Labour Court, Himmatnagar has directed the petitioner to consider yearly increments notionally as on 26.7.1999, i.e., for the period from the date of dismissal till 26.7.1999 and to fix the salary accordingly.

3. It appears from the record that departmental enquiry was initiated against the respondent workman alleging inter alia that he has committed misconduct by remaining absent without getting the leave sanctioned for the period from 28.11.1994 to 28.4.1995. After conclusion of the departmental enquiry disciplinary authority passed the order of dismissal which was challenged by the respondent workmen by raising industrial dispute which was referred to the Labour Court, Himmatnagar, being Reference (LCH) No. 77 of 1997. It is the case on behalf of the petitioner that during the pendency of the said Reference in a Lok Adalat which was held on 24.4.1999 the dispute was resolved and the petitioner agreed to reinstate the respondent workman, however as per conditions No. 3 and 4 of the said settlement the respondent workman was not entitled to any backwages for the interregnum period as well as no increments were to be paid to the respondent workman.

It is the case on behalf of the petitioners that pursuant to the said settlement before the Lok Adalat, the respondent workman came to be reinstated. Thereafter, the respondent workman filed a Recovery Application under Section 33(C)(2) of The Industrial Disputes Act, 1947 (“the I.D. Act” for short) being Recovery Application No. 80 of 2000 for getting benefit of yearly increments from the date of dismissal till reinstatement which was objected to by the petitioner on the ground that once the settlement is accepted by the respondent workman it was not open for him to claim increments for the interregnum period. It appears that inspite of the aforesaid settlement and the facts and circumstances the Labour Court, Himmatnagar, by its judgment and order dated 24.2.2005 allowed the said Recovery Application No. 80/2000. It is also required to be noted that in the meantime the workman has already attained the age of superannuation. Being aggrieved and dissatisfied with the judgment and order passed by the Labour Court, Himmatnagar, dated 24.2.2005 in Recovery Application No. 80/2000, the petitioner Corporation has preferred the present Special Civil Application under Articles 226/227 of the Constitution of India.

4. Shri Ashish Dagli, learned advocate appearing for the petitioner Corporation has vehemently submitted that the Labour Court has gone beyond the scope of settlement entered into between the petitioner and the respondent workman in the

aforesaid Reference, pursuant to which the respondent workman came to be reinstated. It is also further submitted that once the terms of settlement were agreed upon by the respondent workman and by which the respondent workman was not entitled to any increment notionally and/or otherwise from the date of termination till reinstatement the Labour Court has materially erred in directing the petitoner to grant increments from the date of termination till reinstatement notionally and to fix the salary accordingly and therefore it is requested to allow the present Special Civil Application.

5. Considering the settlement, more particularly Conditions No. 3 and 4, which was arrived at between the parties before the Lok Adalat on the basis of which the respondent workman came to be reinstated on 26.7.1999 the respondent workman was not entitled to any other benefit inclusive of increments notionally or otherwise. Under the circumstances, the Labour Court has materially erred in directing the petitioners to give benefits of increments from the date of termination till reinstatement i.e., 26.7.1999 notionally and to fix the salary accordingly. It, therefore, appears that the Labour Court has gone beyond the scope of settlement entered into between the parties which could not have been done in an application made under Section 33(C)(2) of the I.D. Act. The judgment and order dated 24.2.2005 passed by the Labour Court,

Himmatnagar, therefore, cannot be sustained and the same is required to be quashed and set aside.

6. For the reasons stated hereinabove, the judgment and order impugned in the present petition is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.